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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91210379
Party	Defendant Atlas Brew Works LLC
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Attachments	Applicant's Response in Opposition to Opposer's Petition to the Director and Motion to Suspend the Proceedings.pdf(110629 bytes)

)	
Atlas Brewing Company, LLC,)	
)	Opposition No. 91210379
Opposer,)	
v.)	Serial No. 85/642,549
)	
Atlas Brew Works LLC,)	Mark: ATLAS
)	
Applicant.)	

Pursuant to 37 CFR 2.146(e)(1) and TBMP 905(e)(1), Applicant Atlas Brew Works LLC (“Applicant”) herewith responds to, and opposes, Opposer Atlas Brewing Company, LLC’s (“Opposer”) Petition to the Director Seeking Review of the Denial of Summary Judgment and Motion to Suspend the Proceedings.

In its denial of Opposer’s Motion for Summary Judgment, the Board concluded that the evidence presented by Applicant raised genuine issues of material facts as to whether ATLAS is

primarily geographically descriptive as applied to Applicant's goods¹. Board's June 18, 2014 Order at p. 9. Opposer's Petition to the Director should be denied because Opposer alleges no procedural error with respect to the Board's decision. Essentially, Opposer requests that the Director analyze the same basic facts, evidence and arguments from its Motion for Summary Judgment and come to a different conclusion on the merits.

Applicant opposes this Petition on the ground that it requests the Director's review of the merits of Opposer's motion, which cannot be reviewed on petition to the Director under these circumstances. Specifically, the Director's decision on this Petition would be central to the issue before the Board, as the issue of whether the applied for mark is primarily geographically descriptive continues to be one of Opposer's grounds for this opposition. TBMP 901.02(a) makes clear, however, that "[a] party may obtain review of an order or decision of the Board which concerns matters of procedure (rather than the central issue or issues before the Board), and does not put an end to the litigation before the Board, by timely filing a petition to the Director." (emphasis added). See *Chesebrough-Pond's Inc. v. Faberge, Inc.*, 205 USPQ 888, 891 (CCPA 1980) ("We are mindful of the fact that the dividing line between petitionable and appealable matters can be and often is drawn between procedural and substantive decisions"); *Scovill Manufacturing Co. v. Stocko Metallwarenfabriken Henkels und Sohn KG*, 191 USPQ 124 (Comm'r Pat. 1976) ("Petitions to the Commissioner are considered proper where the subject matter of the petition relates to a decision of the Trademark Trial and Appeal Board which is interlocutory or secondary in nature involving rules or practice set by the Commissioner under the authority of the Statute and where the issues on petition are not a part of the central issue before the Board in the proceedings").

¹ The Board also concluded that there were genuine issues of material facts relating to Opposer's argument that Applicant lacked a bona fide intent to use the applied for mark at the time of its application, although that ground was not raised in Opposer's Petition. Board's June 18, 2014 Order at p. 9.

In *Fed. Bureau of Investigation v. Societe: "M. Bril & Co."*, the Opposer petitioned the Commissioner to exercise supervisory authority with respect to denial of its Motion for Summary Judgment after an unsuccessful motion for reconsideration. 167 USPQ 56 (Com'r. 1970). There, the opposer's Petition requested that the Commissioner grant the Motion for Summary Judgment on substantive grounds including likelihood of confusion and deception of the public. *Id.* at 57. In response, the Commissioner determined that the issues raised by the motion were essential and material to the case and could be raised and would be reviewable by the Board in its final decision in the Opposition. *Id.* Here, the issue of whether the applied for mark is primarily geographically descriptive is one of the central issues before the Board and is not procedural in nature. Accordingly, Applicant respectfully requests that Opposer's Petition to the Director be denied.

Applicant submits that Opposer's Petition is a baseless delay tactic and has an extremely low chance of being granted based on the facts at issue. Thus, Applicant respectfully requests that the Motion to Suspend the Proceedings also be denied.

Respectfully submitted,

Date: July 25, 2014

By: /Helen Hill Minsker/

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CERTIFICATE OF SERVICE

I hereby certify that on July 25, 2014, a copy of the foregoing APPLICANT'S RESPONSE IN OPPOSITION TO OPPOSER'S PETITION TO THE DIRECTOR SEEKING REVIEW OF THE DENIAL OF SUMMARY JUDGMENT AND MOTION TO SUSPEND THE PROCEEDINGS was served on the following counsel of record for Opposer via first class mail, postage prepaid, addressed as follows:

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